

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

SHAWN MACE,

Plaintiffs,

v.

ORDER

Civil File No. 11-477 (MJD/LIB)

SCOTT D. HABLE, DR. JOHNSON,
THREE UNNAMED RENVILLE
COUNTY CORRECTIONAL OFFICERS,

Defendants.

Thomas J. Basting, Jr., Briggs & Morgan, PA, Counsel for Plaintiff Shawn Mace.

Barbara A. Zurek, Amy L. Maddox, Melissa Dosick Riethof, Meagher & Geer, PLLP, Counsel for Defendant Dr. Johnson.

Jason M. Hiveley, Iverson Reuvers, LLC, Counsel for Defendants Scott D. Hable and three unnamed Renville County correctional officers

This matter is before the Court on Defendant Dr. Norman Johnson's Motion to Dismiss. [Docket No. 13.] Plaintiff Scott Mace filed a pro se complaint against Defendants Scott D. Hable, Dr. Johnson, and three unnamed Renville County correctional officers. Dr. Johnson moved to dismiss Plaintiff's medical negligence and malpractice claims on the ground that Plaintiff had not met Minnesota statutory requirements for such claims. After Dr. Johnson filed his

motion, Plaintiff was appointed counsel through the Federal Bar Association's Pro Se Project. In opposition to Dr. Johnson's motion, Plaintiff argues that he did not intend to make medical negligence or malpractice tort claims. Instead he states that his claims arise under 42 U.S.C. § 1983. Plaintiff's counsel has stated that he will prepare an amended complaint which will clarify nature and scope of Plaintiff's civil rights claims. The Court construes that statement as a request for leave to file an amended complaint. See Fed R. Civ. P. 15(a)(2).

The Court finds little reason to hold a hearing on a complaint which all sides agree is in need of clarification. The Court will strike the oral argument scheduled for March 23, 2012 and grant Plaintiff leave to file an amended complaint within 60 days. Given Plaintiff's statement that he does not intend to proceed against Dr. Johnson on state law medical negligence or malpractice grounds, the Court will grant Dr. Johnson's motion to dismiss such claims.

Accordingly, based on the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The hearing scheduled for March 23, 2012 is stricken from the calendar;
2. Defendant Dr. Johnson's Motion to Dismiss [Docket No. 13] is **GRANTED**;

3. Plaintiff's state law medical negligence and malpractice claims are **DISMISSED**; and
4. Plaintiff may amend his complaint to assert a claim against Dr. Johnson within 60 days.

Dated: March 12, 2012

s/ Michael J. Davis
Michael J. Davis
Chief Judge
United States District Court